

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

MARCUS TELESFORD,

Plaintiff,

v.

9:16-CV-0793 (BKS/DEP)

**ANTHONY J. ANNUCCI, *Acting*
*Commissioner, et al.,***

Defendants.

Appearances:

Marcus Telesford
02-A-0506
Elmira Correctional Facility
P.O. Box 500
Elmira, NY 14902
Plaintiff, pro se

Christopher J. Hummel, Esq.
Hon. Eric T. Schneiderman
Office of New York State Attorney General
The Capitol
Albany, NY 12224
Attorney for Defendants

Hon. Brenda K. Sannes, United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff Marcus Telesford, commenced this pro se civil rights action asserting claims under 42 U.S.C. § 1983 arising out of his incarceration at Upstate Correctional Facility. Dkt. No. 1. On October 21, 2016, Defendants filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted. Dkt. No. 19. Plaintiff filed a response on November 10, 2016. Dkt. No. 23. This matter was assigned to United States Magistrate

Judge David E. Peebles who, on July 26, 2017, issued a Report and Recommendation recommending that Defendants' motion to dismiss be granted and that plaintiff's complaint be dismissed, with leave to amend only with respect to his Eighth Amendment cause of action. Dkt. No. 24. Magistrate Judge Peebles advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. Dkt. No. 24, p. 20. No objections to the Report-Recommendation have been filed.

As no objections to the Report and Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report and Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228-29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report and Recommendation for clear error and found none, it is adopted in its entirety.

For these reasons, it is

ORDERED that the Report and Recommendation (Dkt. No. 24) is **ADOPTED** in its entirety; and it is further

ORDERED that Defendants' motion to dismiss (Dkt. No. 19) is **GRANTED** and Plaintiff's complaint is **DISMISSED**, with leave to amend only with respect to Plaintiff's Eighth Amendment cause of action; and it is further

ORDERED that any amended complaint regarding Plaintiff's Eighth Amendment cause of action is to be filed within thirty (30) days of the date of this Order; and it is further

ORDERED that if no amended complaint is filed within the thirty (30) days, the Clerk is directed to close this action; and it is further

ORDERED that the Clerk serve a copy of this Order upon the parties in accordance with

the Local Rules.

IT IS SO ORDERED.

Dated: August 18, 2017

Brenda K. Sannes
Brenda K. Sannes
U.S. District Judge